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**How the pandemic challenged a conventional approach to  
employment law and HR...**

***And top tips on how to deal with your workforce in the future***

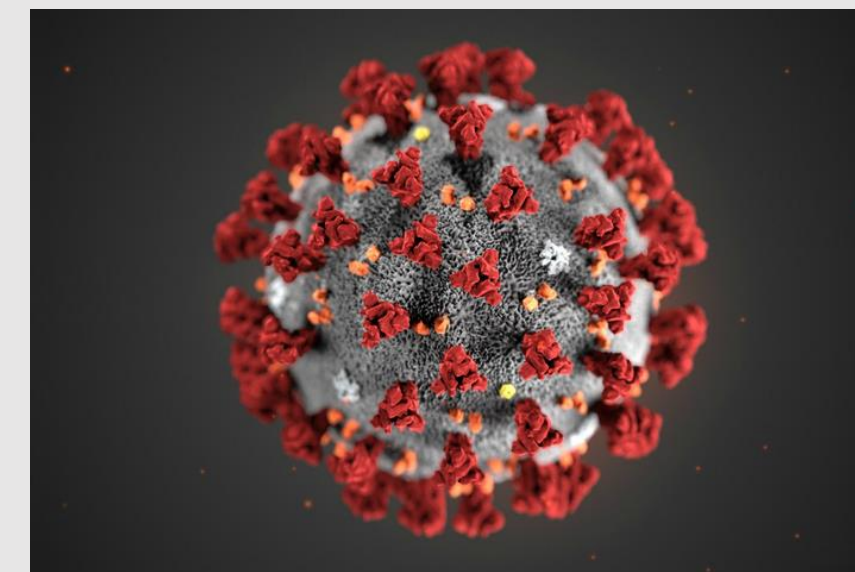
## Presented by...



**Fflur Jones**  
**Managing Partner and Head of Employment**  
**[fjones@darwingray.com](mailto:fjones@darwingray.com)**

## What we will cover today:

- How Covid has impacted the way we work
- Common employment law and HR issues arising as a result of the pandemic
- Top tips on tackling those Covid related HR and employment law issues



# How did Covid change the way we work?

- Increase in remote and hybrid working
- Greater reliance on technology
- Greater emphasis on employee wellbeing and mental health
- A change in focus in terms of employee demands of their employers



# What does the working world look like in 2023?

## The statistics:

- In February 2022, 84% of workers who were required to work from home because of the pandemic said they planned to carry out a mix of working at home and in their place of work in the future.
- In a survey in Spring 2022, 38% of working adults reported having worked from home at some point over the past seven days. This compares to 12% before the pandemic.



# What does the working world look like in 2023?

## The statistics:

- Overall, the proportion of businesses reporting using or intending to include homeworking as a permanent business model increased slightly from 16% in autumn 2020 to 23% in early April 2022
- Workers aged 30 to 49 years were the most likely to report hybrid working between 27 April and 8 May 2022, with 29% reporting doing so.

# What does the working world look like in 2023?

## Key takeaways:

- Home working is here to stay
- Hybrid working is the most popular homeworking model
- The youngest and oldest members of the workforce are the least likely to work from home



# Finding the balance: is too much remote working a bad thing?



## Public Health Wales survey between Nov 2020 – Jan 2021:

- 1 in 2 adults working from home reported increased feelings of loneliness
- 1 in 2 felt home working had worsened their mental wellbeing
- Nearly 3 in 10 thought that their levels of physical activity improved whilst WFH, however, nearly 4 in 10 thought they had decreased
- 1 in 4 felt that their healthy eating habits had improved whilst WFH, but more than 1 in 3 thought that their eating habits had worsened.





# How did we get here?

## Timeline of key Covid milestones

**11 March 2020** - WHO declared Covid-19 a pandemic

**20 March 2020** – Furlough scheme is announced

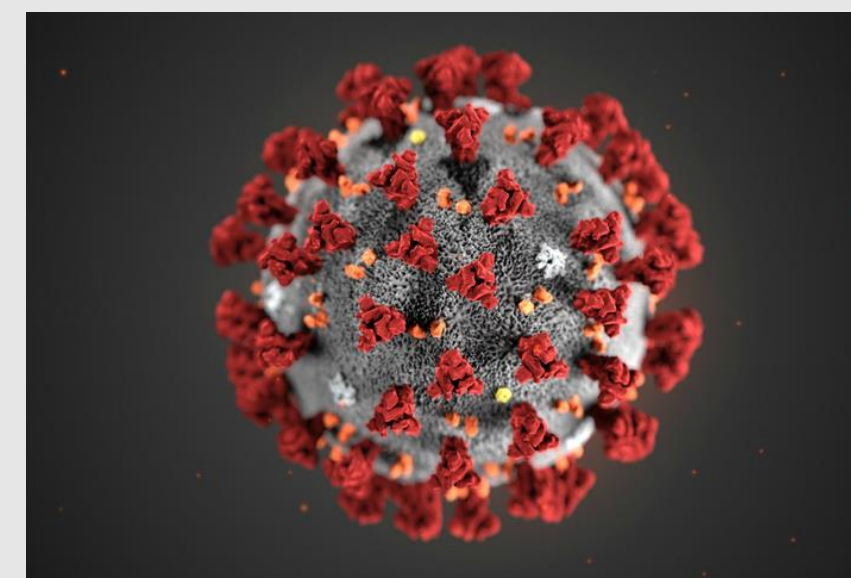
**23 March 2020** – First lockdown announced, along with a requirement to work from home

**27 July 2020** – Legal requirement to WFH unless unavoidable scrapped, meaning it was no longer a criminal offence not to do so

**19 December 2020** – Lockdown announced (WFH unless unavoidable a legal requirement once again)

**September 2021** – Furlough comes to an end

**28 January 2022** – Alert level 0 – legal requirement to work from home scrapped but still advised where possible



# Common Employment law and HR issues post COVID – how an employer embraced change



## Case study 1: Recruitment and retention

The employer is a social housing provider in the UK with many long-serving members of staff but also a relatively high turnover of staff in certain types of roles, such as care workers.

During and after the pandemic, recruitment dropped off a cliff and recruiting in certain teams became a huge problem.

# Common Employment law and HR issues post COVID – how an employer embraced change



## Case study 1: Recruitment and retention problems – how to address them

In addition to difficulties recruiting, retention dropped significantly for the following reasons:

- Longer-serving members of staff took early retirement
- Disillusionment with the move to more remote working
- Communication breakdowns between colleagues
- Loyalty declining as a result of these issues
- Enticement into other organisations offering better benefits

# Common Employment law and HR issues post COVID – how an employer embraced change

How did we assist the employer to address these issues?

1. New working model

2. Pay and Benefits



# Common Employment law and HR issues post COVID – how an employer embraced change



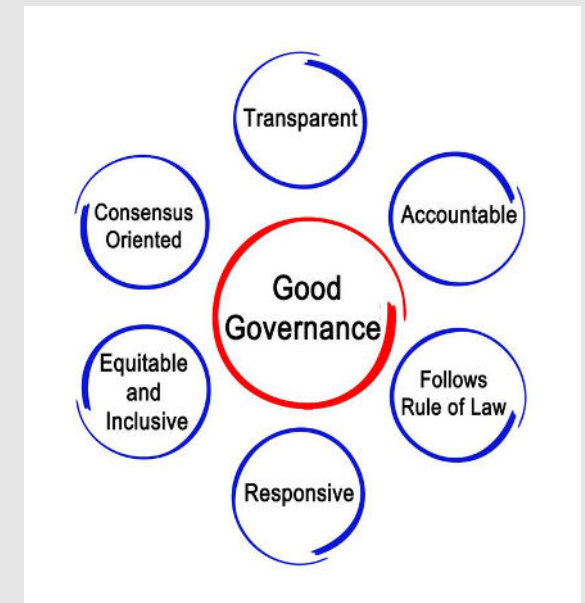
## The result?

Recent reviews have established that recruitment and retention are both improving and are no longer deemed one of the major short-term risks for the organisation.

## Top Tips

- Listen to your employees – engage in surveys and discussions
- Be bold – take decisive action
- Consult over any proposed changes
- Be prepared to adapt some of your proposals
- Take legal and other expert advice to achieve your goals
- Don't get caught short – anticipate the market / your succession issues and plan accordingly

# Common Employment law and HR issues post COVID – the hidden dangers of online working



## Case study 2: Governance breakdown – beware!

- This organisation is a charity which discovered that its chief executive had taken a number of director's loans out – to the tune of tens of thousands of pounds - without the trustees' knowledge or approval since 2020. Much of it was not repaid.
- This was discovered by accident when the treasurer was copied into an email from the organisation's accountant which enclosed draft accounts for signature, which referred to the loans.

# Common Employment law and HR issues post COVID – the hidden dangers of online working



## Case study 2

- Prior to that point, contact between the organisation and the accountant about the draft accounts had gone through the Chief Executive. The board were unaware of her loans.
- The Chief Executive admitted to the trustees that she had taken the loans and disclosed that she had done so because she was in financial and personal difficulty and under stress.
- Neither the trustees nor her colleagues had known about any personal, financial or mental health issues.

# Common Employment law and HR issues post COVID – the hidden dangers of online working

## Case study 2

### How did this happen?

- The organisation's governance procedures had fallen far short of what they should have been because their normal processes had fallen away during lockdown and not been brought back up to scratch
- As the trustees were not meeting the director in person they didn't notice that there was anything wrong
- The director was able to abuse the fact that board meetings were happening remotely and documents being sent and signed electronically as a result of the lockdowns



# Common Employment law and HR issues post COVID – the hidden dangers of online working

## Case study 2



### TOP TIPS

- Directors are accountable to trustees (or boards). They are also responsible for managing directors and scrutinising what they are doing.
- The increase in online meetings (and lack of face to face meetings) created an environment where this was allowed to happen.
- Short/medium-term changes to practices now need to be reviewed to ensure they're fit for purpose in the long term.
- Data protection and security practices and governance in general should also be reviewed.
- Take swift disciplinary action in such circumstances!

# Common Employment law and HR issues post COVID – dip in management skills / sham redundancy process

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**REDUNDANCY**

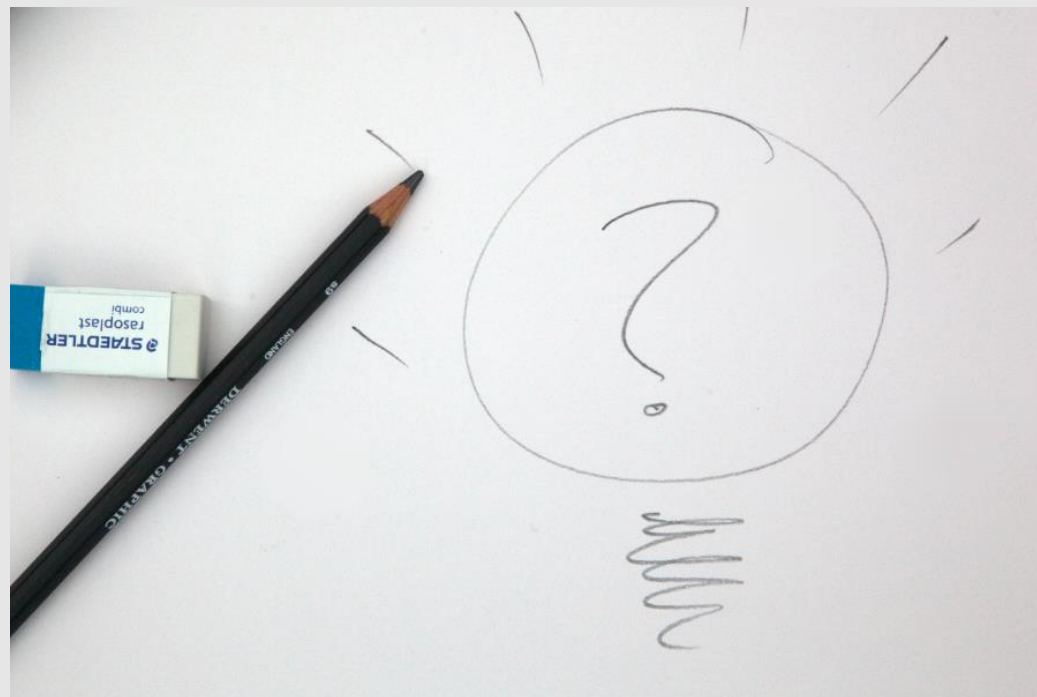
## Case study 3 - Redundancy

- This employee was a long-serving director of an organisation which was undergoing an organisation-wide restructure.
- The organisation had expressed sentiments to its staff about the principles of fair consultation, no pre-determination of issues, sensitive communications and generally trying to be a supportive employer.
- The director was working with her colleagues on the SMT on the restructure.
- No discussions had taken place about what the SMT structure would look like post restructure. Ideas about it had been invited for the next scheduled SMT meeting.

# Common Employment law and HR issues post COVID – dip in management skills / sham redundancy process

## Case study 3

- The director, the Chief Executive and another director were due to fly to abroad for a conference. They met at the airport.
- She was called over to the airport café by the Chief Executive and the other director to be shown their plans for the new structure of SMT.
- The director's role wasn't in the new structure. She realised that they were telling her (without telling her) that she was to be made redundant.



# Common Employment law and HR issues post COVID – dip in management skills / sham redundancy process

## Case study 3



- They didn't make any attempt to talk through what this might mean for her or to offer any support, or any alternatives.
- She then had to spend the trip with them while acting to other stakeholders at the conference as though there was nothing wrong. They both continued to present their plan as a good one despite fact there was clearly no place for her in their new team.

# Common Employment law and HR issues post COVID – dip in management skills / sham redundancy process



## Case study 3

### What went wrong here?

- A pre-determined decision had already been made by the two directors to make her redundant. It undermined any subsequent consultation as it would be a sham. The employee became ill and claimed constructive unfair dismissal.
- The situation was very likely exacerbated by the fact the employer had conducted most of the restructure discussions remotely, on line. It had forgotten how to manage difficult conversations. The fact they worked remotely almost exclusively had created distance and an uncompassionate environment.

# Common Employment law and HR issues post COVID – dip in management skills / sham redundancy process

## Case study 3

### TOP TIPS



- If conducting much work remotely, don't leave compassion and dignity behind! Can lead to irreparable loss of trust and confidence.
- Employers must ensure that any redundancy process is fair, including:
  - Ensuring that there is a genuine business case for redundancy
  - Having fair selection criteria for selecting employees for redundancy
  - Conducting meaningful consultations with affected employees

# Common Employment law and HR issues post COVID – health, safety and wellbeing

## Case study 4

- The employer had an employee insistent on solely homeworking.
- The employer reluctantly agreed to the request.
- The employee was left largely to their own devices.
- The employee developed symptoms of depression and agoraphobia.



# Common Employment law and HR issues post COVID – health, safety and wellbeing



## Case study 4

- Various attempts were made to support the employee.
- They failed, and capability proceedings were commenced.
- The employee claimed disability discrimination – discrimination arising from disability, and failures to make reasonable adjustments.



# Common Employment law and HR issues post COVID- health and safety and wellbeing

## TOP TIPS

- Beware of agreeing to requests that may be detrimental to your business/ the employee's wellbeing
- If going to allow sole home working, make sure you build in adequate support systems to check in / supervise – and be consistent
- Remember that the health and safety duty covers mental wellbeing too
- Get medical / occupational health advice to support any decisions you take
- As the slide with stats from Public Health Wales show, a mix of home and work based working is often best
- If working with new members of staff, remember that they may not fully understand the issues for both them and the organisation

## So what does the future hold?

- Legislative changes arising due to Brexit on the horizon
- These include potential bonfire of many employment law rights
- Impact of the pandemic over the long term
- Embracing technology and digital advances important, but maintaining human relationships paramount
- Adapting quickly to change and creating a resilient workforce more important than ever before



**DARWIN  
GRAY**

@DarwinGrayLLP | [darwingray.com](https://darwingray.com) | 029 2082 9100

*Please email [ggreen@darwingray.com](mailto:ggreen@darwingray.com) if you would like to receive monthly employment law updates from our team.*